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Revolution of Smart Contracts in Arbitration: An Analysis

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ABSTRACT

Today we see everything around us being developed and digitalized, and sometimes we feel very fascinated about everything. It is clear that where there is digitalisation, there will be curiosity. Now, one wonders why there is tons of paperwork if everything is digitalised, specifically in making deals or contracts? It is true that paperwork causes a lot of hassle and it's difficult to keep track of papers considering even if one paper gets lost it becomes tragic to make an account for all papers So, in today's modern world there is a solution for everything we have to click and tap. A smart contract is a solution which can replace traditional contracts. Now after the introduction of the term 'Smart Contracts' we can imagine from its name that the process of making contracts will now be much easier and hassle-free because the artificial intelligence technique (herein referred to as "AI") will automatically decide what is legit and what is not.

Keywords: *smart contracts, blockchain, digitalisation, arbitration, contracts.*

I. INTRODUCTION

"*Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser — in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be business enough.***" – Abraham Lincoln.**

Smart contracts and blockchain are not new notions in a world where technology is at the forefront of progress. While the idea of investing NFTs in this may seem strange to some, combining these ideas with the concept of arbitration, a commonly used term for dispute resolution, has the ability to rearrange the characteristics of a traditional dispute resolution mechanism. It is therefore vital to comprehend the underlying complexities of these notions in order to unravel this intricate combination of blockchain with smart contracts and arbitration.

Blockchain is defined as an "open, distributed ledger proficient in recording transactions between two parties in an effective, reliable, and permanent manner." In its most basic form,

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the operating principles of a blockchain are based on the addition of each transaction or motion as a "block" to the system, allowing the system to continue growing. With every transaction made, the overall system is revised, and the transaction is accessible to all parties involved from anywhere in the world.

These self-executing newly developed contracts are designed to achieve prespecified requirements. Blockchain Arbitration, with the help of smart contracts, could indeed expedite the storage and corroboration of guidelines, as well as electronic execution (upon a specific event comprising an infringement of the agreement) by citing the arbitration clause applied in the smart contract.

If a dispute arises, the smart contract will immediately inform the Arbitrator using a blockchain-based dispute resolution interface. A party can computerize the contractual terms, lock the finances in a smart contract, and condition the smart contract so that the transaction is completed and the funds are transferred.

II. A PROGRESSIVE WAY INTO THE FUTURE: BLOCKCHAIN ARBITRATION

"*It is only when they go wrong that machines remind you how powerful they are.***"**

- Clive James

People actually thought that using digital currencies for everyday transactions would be pretty much impossible two decades ago, but here we are. Automation appears to be taking the lead in this fast-paced world. We nowadays have mobile apps (such as Coin Cloud) and secure websites that can assist with electronic financial transactions. Blockchain arbitration, with the assistance of smart contracts, can help achieve the functions of storing and verifying norms, as well as automatically generated implementation, upon the activation of the smart arbitration clause implemented in the smart contract.

Block arbitration can now be classified as "on-chain" or "off-chain." While "on-chain" refers to the use of a smart contract in a traditional method of dispute resolution, "off-chain" refers to arbitration that does not entail the use of exaggerated automated systems, except for the specific purpose of appointing an arbitrator.

In the event of disputes, the smart contract will immediately inform the jury members, who will pass an award appropriate to the particular instance after analysing the evidence records programmed into the smart contract. In simple words, a party can automate the contract conditions and lock the resources into a smart contract, and condition the smart contract so that the funds only transfer through if the task at hand is completed.

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Following this procedure, the smart contract's self-executability will immediately enforce the award and hand over the prescribed payment to the jury members. Despite the fact that this concept appears to be unfamiliar, an online public dispute resolution protocol known as "Kleros" is now at the centre of attention. Kleros relies on a crowd-sourced jury to weigh the testimony and reach a decision.

III. ASSESSING THE DIFFICULTIES AND CHALLENGES ASSOCIATED WITH BLOCKCHAIN ARBITRATION

The operation of blockchain arbitration raises a multitude of issues. For example, due to the admission of coded testimony, there would be no need for oral briefings in an on-chain arbitration, which is a necessary feature of the arbitral proceedings. This advanced and modern approach to dispute resolution disregards procedural fairness principles and hinders an integral element of the adjudicatory mechanisms. Whatever the aspect of the case, every individual is entitled to a fair trial under the law, which is only feasible if the proper procedures are followed.

Moreover, because the nature of blockchain's stringent features nullifies the involvement of third parties, the possibility of procuring and admitting evidence from third parties is explicitly ruled out. The core principle of privacy and security is an essential characteristic of arbitration. Despite the strong protection offered by blockchain, data security can be a critical challenge when a neutral third party acts as an oracle in resolving disputes.

The regulations of the General Data Protection Regulation (GDPR) are insufficiently empowered to govern the complexities of blockchain's decentralised operation, making it difficult to start imposing legal responsibility on data controllers. Further to that, blockchain's traceability runs counter to the GDPR's provision of the "right to be forgotten."

Finally, technology could never arrive without flaws or threats. regardless of how hard coders strive for flawlessness, there will always be a point where one inaccuracy will eventually collapse and de-stabilize the entire platform.

"*To err is human,' but a human error is nothing to what a computer can do if it tries.***"** – Agatha Christie.

IV. THE DIFFICULTIES ASSOCIATED WITH AWARD ENFORCEMENT

The New York Convention on the Enforcement of Foreign Arbitral Awards of 1958 is the most influential code for enforcing arbitration awards, with 166 signatory parties. According to Article II of the Convention, an arbitration agreement must be in "written form" and must be signed by both parties. However, written contracts or signatures are not permitted in

an operational blockchain arbitration.

Article 7 of the UNCITRAL Model Law, 2006, makes it possible for digital communication in arbitral proceedings, which involves email messages and telegrams that can be used as proof of the agreement. Even though the UN General Assembly asserted in its explanation of Article II of the Convention that using text messages or telefax did not constitute a comprehensive list and had the potential to also include digital communications, UNCITRAL's suggestion to implement the provisions of Article 7 within Article II(2) of the Convention has yet to be acknowledged.

Due to the lack of formal declaration for digital contractual arrangements, courts must decide whether to accept UNCITRAL's suggestions into account based on the evidence and circumstances of the case.

V. THE JOURNEY FORWARD

To allow faster dispensation of justice, alternative dispute resolution (ADR) processes were established, with arbitration being the most popular type of ADR. It was always thought to be the fastest mode of achieving justice, but today some of the most well-known open-source portals have theorized and implemented something even better.

The most alluring quality of arbitration, as compared to the strict conventional litigation process, is its adaptability to trends and advancements. Furthermore, various EU domestic legislations are not suited to cope with the challenges that arise from such arbitrations at this time. Contract creation must incorporate 'codes' as a permissible form of agreement, in addition to written and spoken agreements.

In accordance with the 2006 UNCITRAL proposals, the Convention should be flexible to accommodate electronic-based arbitral proceedings. Data and privacy concerns can be addressed by employing a confidential, permissioned blockchain system, which keeps transactions within a tight loop and prevents outsiders from accessing them. However, technology should not be viewed as a self-contained entity; rather, it should be viewed as a tool to assist people.

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